

REMARKS

Claims 1-27 were pending and rejected.

Claims 1, 9-20, and 27 are amended herein.

The typographical errors in claims 9, 18, 11, and 27 have been corrected as requested by the Examiner.

Claims 1-27 stand rejected under §103(b) as being unpatentable over Berkson in view of “Evaluating the Sales Force” (“SBR”) and in further view of Gozdeck. This rejection is traversed.

Firstly, the deficiencies of Berkson and Gozdeck have been fully discussed in the prior amendments (Amendment A, filed November 11, 2005, and Amendment B, filed May 11, 2006), which arguments are incorporated by reference herein. In particular, the deficiency of Berkson as a primary reference was demonstrated in Amendment A, and the Examiner apparently agreed with such analysis, since the Examiner relied on Gozdeck as the primary reference in the second official action dated February 13, 2006. Without repeating the entirety of the prior argument, Berkson only discloses using “games” as an incentive to customer service agents to increase their performance, with a system that automatically displays a game interface to a customer service agent after the agent has met a specified performance level. (Berkson, 8:6-32). It was further demonstrated in Amendment A that modifying Berkson in view of Gozdeck would destroy the latter’s principle of operation. There would be no need for Berkson to provide “games” as incentives, if the agent could directly see the changes in their compensation—and hence be really motivated by financial gain, not superficially motivated by Berkson’s “video games.” Again, the Examiner appears to have accepted this analysis based on the second official action. Thus, the combination of Berkson and Gozdeck remains improper.

Neither Gozdeck nor SBR remedy the deficiencies of Berkson. The deficiency of Gozdeck was demonstrated in Amendment B, and apparently accepted by the Examiner, who now relies on SBR. But SBR is similarly deficient: it does not disclose anything pertaining to “displaying to the agent a change in the amount of variable compensation based on the change in the agent’s performance level”, and it does not disclose a “graphical user interface” that includes “graphical controls” that allow an agent to “change a first percentile rankings” of the agent’s performance. As is clear on its face, SBR describes various ways in which sales managers can evaluate their employees, according to different criteria and systems. There is simply no mention, no hint, no suggestion of any mechanism or means by which employees themselves can see the current amount of their variable compensation based on their own measured performance.

Indeed, the motivation alleged by the Examiner is facially inconsistent with the references. The Examiner suggests that the motivation to combine Berkson with SBR “to include determining percentile rankings . . .[is] to enable agents to know how they are performing not just in respect to a benchmark but also against their peers and to enable the agents to track bonus payments more effectively in real time.” But SBR focuses solely on providing managers with ranking information. There is no mention in SBR of providing the ranking information to the employees so that they have a benchmark “against their peers” or any mention of providing this information so that employees can track their compensation.

Thus, for these reasons alone, the combination of Berkson, Gozdeck and SBR is deficient, and fails to disclose or suggest the claimed invention.

Further, and without waiving the above bases of patentability, claim 1 and the other independent claims have been amended to recite that the first and second performance measures

are *quantitative* performance measures. The references as combined, fail to disclose all of the claimed elements.

The Examiner admits that neither Berkson nor Gozdeck discloses displaying a change in the amount of variable compensation for an agent based on a change in the first and second percentile ranking of performance measures of the agent's performance. Thus, the Examiner now cites SBR as allegedly teaching "ranking systems," and asserts that it is "inherent that this type of ranking system will use some type of a percentile/scale". This assertion is incorrect.

Firstly, a close reading of SBR shows that this discussion of “ranking” is within the context of “Qualitative Measures” of evaluating employees. The actual text of SBR is reproduced here:

3. QUALITATIVE MEASURES

4 Sales managers can rate how well sales people carry
5 out their duties with qualitative measures. These
6 evaluations can be used on a number of sales force
7 characteristics, such as temperament, persistence,
8 congeniality and teamwork. Two categories of qualita-
9 tive measures to use are "ranking systems" and "rat-
10 ing systems."

11 **Ranking systems** relate a salesperson's performance
12 to the performance of peers, rather than to predetermined
13 standards. These systems are particularly useful
14 when evaluating candidates for promotion or for
15 special assignments.

16 One disadvantage of ranking systems is that as the
17 size of the sales force increases, the sales manager's
18 ability to identify individual performance diminishes.
19 Ranking systems, therefore, are most effective when
20 applied to a small sales force.

In this discussion, and the entire SBR article, is about how sales managers can evaluate their employees using subjective measures. When understood in this context, this passage describes how a sales manager can “rank” his employees on “qualitative” subjective measures such as “temperament” and “persistence.” For example, the sales manager would assign to each employee a “rank” as to their temperament; thus 10 employees could be ranked from 1 to 10. A

judgment as to temperament is clearly subjective. It should be obvious that in this type of assigned ranking system, there is no use at all of “percentiles.” Indeed, the SBR article explicitly identifies the problems with assigning rankings in this manner: it does not work with large sales forces where, for example the sales manager would be hard pressed to individually rank, say 100 employees (see lines 16-20 above). On the other hand, in a small sales force, say 10 people, percentile ranking is of little use. It is only in relatively large groups that have a distribution of values does percentile ranking become useful, where the ranking is based not on subjective qualitative assignments (as in SBR) but on the evaluation of quantitative performance measures. Thus, SBR not merely teaches away, but fully admits why its “ranking system” of “qualitative” factors would not work with large groups of workers. Thus, the Examiner is incorrect in stating that SBR must inherently use a “percentile ranking.” In sum, SBR’s ranking of qualitative performance measures (e.g., assigning ranks to employees based on subjective judgments by the manager of qualitative factors) does not disclose or suggest the claimed *graphical controls* that allow the agent to *change a percentile ranking of quantitative performance measures* and thereby see the change in his variable compensation.

Further, both SBR and Gozdeck are basically about measuring an employee performance, whereas Berkson is not about measurement at all, but merely about providing incentives to employees. Thus, absent the Examiner’s hunt for a reference that mentions the word “ranking,” there is no motivation to combine Berkson with SBR. Indeed, the Examiner has now rejected the claims three times, first using the combination of Berkson as the primary reference in view of Gozdeck, then switching to Gozdeck as the primary reference in view of Berkson, and now falling back to Berkson again as the primary reference with Gozdeck in combination with SBR. This pattern shows that the Examiner is merely attempting to reconstruct the claims through repeated juxtapositions of selected features of the references, in the absence of a proper

motivation to combine, and in the absence of references whose combination would not undermine their own principles of operation. This is an impermissible basis for a rejection under §103(b).

As the combination of Berkson, SBR and Gozdeck does not disclose or suggest graphical controls for manipulating percentile rankings for displaying changes in variable compensation, as claimed, claims 1-27 are patentable over the references.

The Examiner is invited to contact the undersigned attorney if she believes that a further discussion of the references would be beneficial towards placing this application in condition for allowance.

Respectfully submitted,
S. RENEE STARNES, ET AL.

Dated: October 17, 2006

By: Robert R. Sachs/
Robert R. Sachs, Reg. No. 42,120
Fenwick & West LLP
Silicon Valley Center
801 California Street
Mountain View, CA 94041
Tel.: (415) 875-2410
Fax: (415) 281-1350